

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETER FITZROY THOMAS AZILLE : CIVIL ACTION  
: :  
v. : :  
: :  
PHILADELPHIA COMMON PLEAS : :  
COURT-TRIAL DIVISION, et al. : NO. 13-5448

M E M O R A N D U M

SLOMSKY, J. MARCH , 2014

Plaintiff, an inmate, has filed a pro se civil rights amended complaint (Document No. 4) against the Philadelphia Court of Common Pleas, his former criminal defense attorney, the Commissioner of the Philadelphia prisons, the Warden of the Curran-Fromhold Correctional Facility and a correctional officer. For the following reasons the claims against David Cross, Esq. and the Philadelphia Court of Common Pleas will be dismissed pursuant to 28 U.S.C. § 1915(e). The claims against the remaining defendants may proceed.

In order to bring suit under 42 U.S.C. § 1983, plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. West v. Atkins, 487 U.S. 42 (1988). A defense attorney, whether court-appointed or privately retained, represents only his client, and not the state, and cannot be sued under § 1983. Polk County v. Dodson, 454 U.S. 312 (1981). Therefore, Attorney David Cross may not be sued in this action, and plaintiff's claims against him must be dismissed.

The Philadelphia County Court of Common Pleas is a state entity entitled to Eleventh Amendment immunity. See Benn v. First Judicial Dist. Of Pa., 426 F.3d 233 (3d Cir. 2005). Therefore, the claims against this defendant will also be dismissed.